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This issue contains

THE DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 81–77)

Synopses of Drawback Decisions

The following are synopses of drawback rates issued September 6, 1979, to December 3, 1980, inclusive, pursuant to sections 22.1 through 22.5, inclusive, Customs Regulations.

In the synopses below are listed for each drawback rate approved under 19 U.S.C. 1313(d), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the basis for determining payment, the Regional Commissioner to whom the rate was forwarded, and the date on which it was forwarded.

(DRA–1–09)

Dated: April 6, 1981.

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

(A) Company: Penick Corp.
Articles: Medicinal preparations; flavoring extracts.
Merchandise: Domestic tax-paid alcohol.
Factory: Lyndhurst, N.J.
Statement signed: June 26, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: New York, August 14, 1980.

(B) Company: Sethness Greenleaf, Inc.
Articles: Flavoring extracts.
Merchandise: Domestic tax-paid alcohol.
Factory: Chicago, Ill.

Statement signed: October 1, 1979.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Chicago, May 13, 1980.

(C) Company: Tobacco Technology Inc.
Articles: Flavoring extract for tobacco (essential oil MPC 404–33).
Merchandise: Domestic tax-paid ethyl alcohol (190 proof).
Factory: Upperco, Md.
Statement signed: August 10, 1979.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Baltimore, September 6, 1979.

(D) Company: Warner-Jenkinson Co., a division of the Seven-Up Co.
Articles: Flavoring extract known as No. 3272 diet lemon-line.
Merchandise: Domestic tax-paid alcohol.
Factory: St. Louis, Mo.
Statement signed: May 28, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: New York, December 3, 1980.

(E) Company: Warner-Jenkinson Co., a division of the Seven-Up Co.
Articles: Flavoring extract known as No. 725 lemon-lime.
Merchandise: Domestic tax-paid alcohol.
Factory: St. Louis, Mo.
Statement signed: March 21, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: New York, December 3, 1980.

(T.D. 81–78)

Synopses of Drawback Decisions

The following are synopses of drawback rates issued November 19, 1980, to December 18, 1980, inclusive, pursuant to sections 22.1 through 22.5, inclusive, Customs Regulations.

In the synopses below are listed for each drawback rate approved under 19 U.S.C. 1313(b), the name of the company, the specified articles on which drawback is authorized, the merchandise which will be used to manufacture or produce these articles, the factories where the work will be accomplished, the date the statement was signed, the

basis for determining payment, the Regional Commissioner to whom the rate was forwarded, and the date on which it was forwarded.

(DRA-1-09)

Dated: April 6, 1981.

MARILYN G. MORRISON,
Director,
Carriers, Drawback and Bonds Division.

(A) Company: Alpha Tube Corp.
Articles: Steel tubes.
Merchandise: Hot-rolled, cold-rolled, galvanized or aluminized steel sheet, strip, and blanks.
Factory: Holland, Ohio.
Statement signed: April 2, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: New York, December 8, 1980.

(B) Company: Beatrice Foods Co., Sanna Division.
Articles: Nondairy creamer.
Merchandise: Refined coconut oil.
Factories: Vesper and Menomonie, Wis.
Statement signed: August 19, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Los Angeles, December 2, 1980.

(C) Company: Campbell Soup Co.
Articles: Canned and frozen food products.
Merchandise: Monosodium glutamate.
Factories: Various factories as listed in manufacturer's statement.
Statement signed: September 4, 979.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Baltimore, December 1, 1980.

(D) Company: Caulkins Indiantown Citrus Co.
Articles: Frozen concentrated orange juice and orange juice drink base.
Merchandise: Concentrated orange juice for manufacturing.
Factory: Indiantown, Fla.
Statement signed: December 2, 1980.
Basis of claim: Used in.

Rate forwarded to Regional Commissioner of Customs: Miami, December 16, 1980.

(E) Company: Coca-Cola Bottling Co. of New England.
Articles: Coca-Cola and other soft drinks in cans or bottles.
Merchandise: Flavoring sirups.
Factory: Needham Heights, Mass.
Statement signed: January 10, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioners of Customs: Boston, New York, and Miami, December 10, 1980.

(F) Company: The Coca-Cola Co.
Articles: Frozen and unfrozen citrus juice concentrates; frozen and unfrozen concentrated ades and drinks; unfrozen, single strength fruit drinks; and other similar juice and drink products.
Merchandise: Refined sugar; orange, grapefruit, lemon, tangerine, lime, and grape juice concentrate in bulk; single strength orange juice in bulk; natural orange essence.
Factories: Auburndale, Forest City, Leesburg, and Plymouth, Fla.; Anaheim, Calif.; Hightstown, N.J.; Geneva, Ohio; Paw Paw, Mich.
Statement signed: June 16, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Miami, December 15, 1980.
Revokes: T.D. 79–192–E.

(G) Company: Combustion Engineering, Inc.
Articles: Fossil and/or nuclear powered steam generating boilers and parts thereof.
Merchandise: Forgings, fittings, castings, plates, structured shapes, rods, bars, strips, sheets, and plated metal components.
Factories: Various factories as listed in manufacturer's statement.
Statement signed: June 20, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: New York, November 21, 1980.

(H) Company: Copperweld Corp.
Articles: Aluminum covered steel wire and strand; aluminum covered steel wires, stranded together with solid aluminum wires.
Merchandise: Iron or steel rods, plain or aluminum coated; iron or steel wire, plain or aluminum coated.
Factory: Oswego, N.Y.
Statement signed: April 8, 1980.

Basis of claim: Appearing in.
Rate forwarded to Regional Commissioners of Customs: New York and Baltimore, December 1, 1980.

(I) Company: Continental Grain Co.
Articles: Linseed oil and linseed meal.
Merchandise: Flax seed.
Factory: Culbertson, Mont.
Statement signed: November 14, 1980.
Basis of claim: Used in, with distribution to the products obtained, in accordance with their relative value at the time of separation.
Rate forwarded to Regional Commissioner of Customs: New York, December 3, 1980.

(J) Company: Data General Corp.
Articles: Computer systems, computer subsystems, and peripheral computer equipment.
Merchandise: Printed circuit board products.
Factories: Southboro, Mass.; Westbrook, Maine; Cary, N.C.; Portsmouth, N.H.; Austin, Tex.
Statement signed: September 9, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: San Francisco, December 18, 1980.
Revokes: T.D. 80–122–I.

(K) Company: Eddyleon Chocolate Co., Inc.
Articles: Confectionery products.
Merchandise: Extra-fine hard refined sugar: fruit sugar; sanding hard refined sugar; and hard refined confectionery sugar.
Factory: Garden City, N.Y.
Statement signed: April 17, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: New York, December 16, 1980.

(L) Company: Eastman Kodak Co.
Articles: Coupler intermediates.
Merchandise: O-chloroaniline.
Factories: Kingsport, Tenn.; Batesville, Ark.
Statement signed: July 10, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Baltimore, November 19, 1980.

(M) Company: Eastman Kodak Co.
Articles: Triethyl phosphate.
Merchandise: Phosphorus pentoxide (phosphoric anhydride).
Factory: Kingsport, Tenn.
Statement signed: September 17, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Baltimore, December 16, 1980.

(N) Company: Garfield Industries, Inc.
Articles: Buffing wheels.
Merchandise: Piece goods.
Factory: Fairfield, N.J.
Statement signed: October 1, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: New York, December 15, 1980.

(O) Company: General Tire & Rubber Co.
Articles: Steel tire cord; rubber tires; steel tire cord, creel or woven and coated.
Merchandise: Steel tire cord.
Factories: Various factories as listed in manufacturer's statement.
Statement signed: August 12, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Chicago, December 5, 1980.
Revokes: T.D. 74–253–V.

(P) Company: B. F. Goodrich Co.
Articles: Polymer chemicals and commodities.
Merchandise: Para nitroaniline.
Factories: Akron, Ohio; Henry, Ill.
Statement signed: October 7, 1980.
Basis of claim; Appearing in.
Rate forwarded to Regional Commissioner of Customs: Baltimore, December 9, 1980.
Revokes: T.D. 78–258–N.

(Q) Company: H & H Tube & Manufacturing Co.
Articles: Brass and copper lockseam tubing.
Merchandise: Brass and copper sheet, strip and foil.
Factory: Cheboygan, Mich.
Statement signed: July 30, 1980.

Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: New York, November 25, 1980.

(R) Company: Kama Corp.
Articles: Polystyrene sheets (oriented).
Merchandise: Styrene monomer.
Factory: Hazleton, Pa.
Statement signed: September 9, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Baltimore, November 21, 1980.

(S) Company: Mobay Chemical Corp., Agricultural Chemicals Division.
Articles: Guthion 50 W.P. (wettable powder)—insecticide.
Merchandise: Guthion technical.
Factory: Kansas City, Mo.
Statement signed: October 17, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Chicago, December 12, 1980.
Revokes: T.D. 76–235–H.

(T) Company: Modine Manufacturing Co.
Articles: Heat exchangers, radiators, coolers, and other heat transfer products and parts.
Merchandise: Copper and copper alloy sheet, strip and plate; copper tube; brass tube; brass alloy sheet, strip, plate, and tube.
Factories: Emporia, Kans.; Paducah, Ky.; Trenton, Mich.; Whittier, Calif.; Pemberville, Ohio; Bloomington, Ill.
Statement signed: September 24, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: Chicago, November 21, 1980.
Revokes: T.D. 56318–F, as amended by T.D. 56417–E and T.D. 67–14–P.

(U) Company: Rohm and Haas Delaware Valley, Inc.
Articles: Postemergence herbicides.
Merchandise: Blazer technical.
Factory: Philadelphia, Pa.
Statement signed: September 30, 1980.
Basis of claim: Used in.

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Rate forwarded to Regional Commissioner of Customs: Baltimore, December 18, 1980.
Revokes: T.D. 80–280–T.

(V) Company: Rohm and Haas Texas Inc.
Articles: Oil additives (pour depressants).
Merchandise: Cetyl-stearyl alcohol (C16/C18).
Factory: Deer Park, Tex.
Statement signed: April 24, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Baltimore, November 24, 1980.

(W) Company: Sandoz, Inc.
Articles: Leucopure EGM.
Merchandise: NAPOF.
Factory: Fair Lawn, N.J.
Statement signed: October 27, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: New York, December 1, 1980.

(X) Company: Sunstar Foods, Inc., citrus division.
Articles: Concentrated orange juice, concentrated grapefruit juice, and concentrated drink base.
Merchandise: Concentrated orange juice for manufacturing and concentrated grapefruit juice for manufacturing.
Factory: Lakeland, Fla.
Statement signed: September 24, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: Miami, December 12, 1980.

(Y) Company: Teledyne Wah Chang Albany.
Articles: Titanium and titanium alloy products as follows: sponge-blends, pure titanium only; ingot; forging; round and square bar; wire; extrusions; plate; sheet; strip; foil; tubing; powder.
Merchandise: Titanium metal content of commercial grade titanium tetrachloride; titanium sponge; titanium ingot.
Factory: Albany, Oreg.
Statement signed: July 30, 1980.
Basis of claim: Appearing in.
Rate forwarded to Regional Commissioner of Customs: San Francisco, November 26, 1980.

(Z) Company: Union Carbide Corp.
Articles: Graphite electrodes.
Merchandise: Calcined petroleum coke.
Factory: Columbia, Tenn.
Statement signed: November 5, 1980.
Basis of claim: Used in.
Rate forwarded to Regional Commissioner of Customs: New York, December 12, 1980.

(T.D. 81–79)

American Manufacturer's Petition

Decision denying American manufacturer's petition requesting reclassification of footwear known as moon boots: Petitioner's desire to contest this decision

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of (1) decision on American manufacturer's petition, and (2) receipt of notice of petitioner's desire to contest this decision.

SUMMARY: In response to an American manufacturer's petition requesting that certain waterproof footwear known as moon boots be reclassified under the provision for other footwear which is over 50 percent by weight of rubber or plastics (except footwear having uppers of which over 50 percent of the exterior surface area is leather) in item 700.60, Tariff Schedules of the United States (TSUS), Customs advised the petitioner that the particular moon boots in question, as well as footwear of the same class or kind, would continue to be classified under the provision for other footwear which is over 50 percent by weight of rubber or plastics and having uppers of which over 90 percent of the exterior surface area is rubber or plastics (except footwear having foxing or foxing-like band applied or mold at the sole and overlapping the upper) in item 700.58, TSUS. Upon being informed that its petition had been denied, the petitioner filed notice of its desire to contest the decision in accordance with section 516 of the Tariff Act of 1930, as amended.

FOR FURTHER INFORMATION CONTACT: Donald F. Cahill, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–8181.

SUPPLEMENTARY INFORMATION:

BACKGROUND

A petition was filed under section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), by Prevue Products, Inc., Manchester, N.H., an

American manufacturer, requesting that certain waterproof footwear known as moon boots be reclassified under the provision for other footwear which is over 50 percent by weight of rubber or plastics (except footwear having uppers of which over 50 percent of the exterior surface area is leather) in item 700.60, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), dutiable at the rate of 20 percent ad valorem and subject to an American selling price (ASP) basis of valuation (headnote 3(b), schedule 7, subpart 1A, TSUS). In the alternative, the petitioner argued for reclassification under the provision for other protective footwear which is over 50 percent by weight of rubber or plastics and having soles and uppers of which over 90 percent of the exterior surface area is rubber or plastics (except footwear with uppers of nonmolded construction formed by sewing the parts thereof together and having exposed on the outer surface a substantial portion of functional stitching) in item 700.53, TSUS, dutiable at the rate of 37.5 percent ad valorem.

In support of its contention, the petitioner describes the footwear involved as a moon boot which extends above the ankle and is designed to be worn over, or in lieu of other footwear as a protection against water, cold, or inclement weather, is over 50 percent by weight of rubber or plastics, has soles and uppers of which over 90 percent of the exterior surface area is rubber or plastics, and has a premolded rubber/plastic shell bottom, the sides of which extend upward from the bottom of the boot to above the insole of the boot. The sides of the premolded shell bottom are sewed to, and overlap by approximately one-half inch the polyurethane top portion of the boot.

Notice of the petition was published in the Federal Register on January 30, 1980 (45 F.R. 6881). This notice advised that importations of the moon boots involved were being classified under the provision for other footwear which is over 50 percent by weight of rubber or plastics and having uppers of which over 90 percent of the exterior surface area is rubber or plastics (except footwear having uppers of which over 50 percent of the exterior surface area is leather or footwear having foxing or foxing-like band applied or molded at the sole and overlapping the upper) in item 700.58, TSUS, dutiable at the rate of 6 percent ad valorem.

DECISION ON PETITION AND RECEIPT OF PETITIONER'S NOTICE OF DESIRE TO CONTEST

The first issue to be resolved is whether the instant footwear has a foxing or foxing-like band applied or molded at the sole which overlaps the upper and which would preclude classification under item 700.58, TSUS.

The term "foxing" has been defined as follows:

> shoe upper material forming or covering the lower part of the quarter of a shoe. With rubber soled canvas upper shoes, foxing is usually a strip of rubber covering and securing the joint between sole and upper.

"The Art and Science of Footwear Manufacturing" (American Footwear Industries Association, 1974).

> a piece of leather put on the upper leather of the shoe along the edge next to the sole

"Funk and Wagnalls New Practical Standard Dictionary" (1956).

> a piece of material applied to the upper or extending around the outsole of a boot or a shoe

"Websters' Third International Dictionary" (1961).

A reading of the exclusionary language in item 700.58, TSUS, taken in conjunction with the definitions cited above for foxing leaves no doubt in our mind that the function of foxing is to reinforce or supplement the juncture between the sole and upper of footwear.

Customs previously has ruled that for the purposes of computing the exterior surface area of an upper, the upper is everything from just below the insole level. Our position as to what constitutes an upper for tariff purposes is logical and we see no reason why the same concept cannot be used or should not be used with respect to the use of that term in the exclusionary clause in item 700.58, TSUS. It appears to us that the application of a different definition for the term "upper" in this situation is unwarranted and certainly would be inconsistent with previous rulings.

With respect to the moon boots in issue, that juncture which a foxing must reinforce or supplement in order to preclude classification under item 700.58, TSUS, is at a point just below the insole level. However, the uppers of the moon boots involved do not extend down to this point; thus, the sides of the shell bottom do not overlap the upper at this point, and consequently, they do not meet the exclusionary requirement of overlapping the upper.

Even if we assume that the overlapping need not occur at the juncture of the sole and upper, the stitching of the sides of the premolded bottoms to the polyurethane upper is not the overlapping contemplated by the statute because the stitching merely attaches the materials to each other and is not in the nature of reinforcement. In addition, the ½-inch overlap in the case of the instant moon boots is necessary to effect a joinder of the materials and does not constitute a reinforcement.

Customs has held that the exclusionary language in item 700.58, TSUS, applies to a moon boot similar in all material respects to the

moon boot in issue except that the upper was stitched to the sock lining and was complete before the attachment of the shell bottom. The petitioner, in view of our position that this type construction represents a molded foxing, urges that even if the sides of the shell bottoms of the moon boots in issue do not precisely meet the definition of foxing, they certainly qualify as a foxing-like band. He maintains that the terms "foxing" and "foxing-like band" do not encompass the same articles because it is presumed that Congress did not use meaningless language in its tariff acts. Further, the petitioner maintains that the term "foxing-like band" was intended to pertain to bands which although technically not foxing, were nevertheless of such similar design that they also qualify under the parenthetical exception of item 700.58, TSUS.

The term "foxing-like band" has to our knowledge never been defined. In the past, Customs has treated as a foxing-like band any band which simulated the function of conventional foxing.

It is apparent from a visual examination of a sample of the moon boot in issue that the sides of the shell bottom do not simulate a reinforcement of the juncture between the sole and upper and they do not simulate a reinforcement of the stitching that joins them to the polyurethane upper. Thus, the sides of the premolded shell bottoms constitute neither a foxing nor a foxing-like band within the purview of the exclusionary language in item 700.58, TSUS.

The second issue to be resolved is whether the moon boots in issue are precluded from classification under item 700.53, TSUS, by having "uppers of nonmolded construction formed by sewing the parts thereof together and having exposed on the outer surface a substantial portion of functional stitching" as found in the exclusionary language to that provision.

The petitioner urges that because the uppers of the moon boots involved consist of both molded and nonmolded material that the moon boots are not precluded from classification under item 700.53, TSUS. He further asserts that in order to be excluded from classification under item 700.53, TSUS, the entire upper, and not simply a part of the upper, must be of nonmolded construction. In view of the fact that a portion of the premolded shell of the boot forms a part of the upper, the petitioner concludes that classification under item 700.53, TSUS, is proper, and that such classification would preclude classification under item 700.58, TSUS.

The petitioner relies heavily on the case of *International Seaway Trading Corp.* v. *United States*, 69 Cust. Ct. 144, C.D. 4385 (1972), to support his position. The footwear involved in that case is described as follows:

> The imported boots, composed of rubber, are formed by placing a number of differently shaped pieces of rubber material

upon a textile boa (lining) which has been stretched tight upon a metal last. While most of the rubber pieces adhere to the boa either by means of self-adhering quality (tackiness) or by means of an adhesive applied to them before being mounted on the last, some of the pieces comprising the upper portion of the boot are stitched together before placement upon the boa. (It is this phase of the process, namely, the stitching in the upper that remains visible in the finished boot, which centers the present controversy.) When all the pieces of rubber are fully assembled on the last the last is inserted into an autoclave where the boot is vulcanized. And after vulcanization, the boot is trimmed, inspected, and packed for shipment.

The court rejected plaintiff's claim that the woodmen's boots came within the exclusionary language of item 700.53, TSUS, because the boots were formed by vulcanization rather than by sewing the parts together.

The basic difference between the boots in the *International Seaway* case and the moon boots in issue is that with the *Seaway* boots vulcanization was the force that held the parts together and not the stitching, whereas the uppers of the instant moon boots are not formed by vulcanization or molding but are stitched together with the stitching exposed. In the case of the moon boots it is clearly the stitching which is the force which holds the parts together.

The petitioner states that "the importance of the *International Seaway* case is to be found in the U.S. Customs Court's legal, not factual conclusions." He points out that the court held that the exclusionary language involved must be strictly construed. Further, "the teaching of the *International Seaway* case is that footwear falling short in any respect to the specifically designated prerequisites set forth in the nonmolded parenthetical exception cannot escape tariff classification under items 700.51–700.53."

We agree with the petitioner that the exclusionary language involved must be strictly construed. However, the interpretation urged by the petitioner is overly restrictive. It is our view that the boots in issue fall squarely within the parenthetical exception to item 700.53, TSUS. We note that the exclusionary language to item 700.53, TSUS, requires that the uppers be of nonmolded construction. However, there is no requirement that the material comprising the parts of the uppers be of nonmolded construction. In this instance all the parts are nonmolded except that portion of the shell bottom sides extending upward from just below the insole level which is considered to be a part of the upper. Even that molded part of the upper is stitched to the upper thus, satisfying the requirement that the upper be formed by sewing the parts together. In conclusion, the uppers are formed and held together by functional stitching and not by molding or vulcanization and consequently, are considered to be of nonmolded construction.

For the reasons stated above, by letter of December 10, 1980, file No. 062909, the petitioner was advised that his petition was denied and that the practice of classifying the moon boots under item 700.58, TSUS, would be continued.

In response, by letter dated December 30, 1980, the petitioner filed notice of its desire to contest this decision in accordance with section 516(c), Tariff Act of 1930, as amended (19 U.S.C. 1516(c)), and section 175.23, Customs Regulations (19 CFR 175.23). However, under section 516(d), Tariff Act of 1930, as amended (19 U.S.C. 1516(d)), the current Customs practice of classifying this type of moon boot under item 700.58, TSUS, will continue so long as no decision of the U.S. Court of International Trade or the U.S. Court of Customs and Patent Appeals not in harmony with this practice is published.

AUTHORITY

This notice is being published in accordance with section 516(c), Tariff Act of 1930, as amended (19 U.S.C. 1516(c)), and section 175.24, Customs Regulations (19 CFR 175.24).

DRAFTING INFORMATION

The principal author of this document was Barbara E. Whiting, Regulations and Information Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: April 8, 1981.

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

[Published in the Federal Register April 13, 1981 (46 F.R. 21741)]

(T.D. 81-80)

Cotton and ManMade Fiber Textile Products—Restriction on Entry

Restriction on entry of cotton and manade fiber textile products manufactured or produced in Mexico

There is published below a directive of August 27, 1980, received by the Commissioner of Customs from the chairman, Committee

for the Implementation of Textile Agreements, concerning restriction on entry of cotton and manmade fiber textile products in categories 352 and 650 manufactured or produced in Mexico. This directive amends, but does not cancel, that committee's directive of December 18, 1979 (T.D. 80–53).

This directive was published in the Federal Register on September 2, 1980 (45 F.R. 58181), by the committee.

(QUO–2–1)

Dated: April 8, 1981.

WILLIAN D. SLYNE
(For Richard R. Rosettie, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., August 27, 1980.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: This directive further amends, but does not cancel, the directive issued to you on December 18, 1979, by the chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton and manmade fiber textile products, produced or manufactured in Mexico.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended, between the Governments of the United States and Mexico; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on September 2, 1980, and for the 12-month period beginning on January 1, 1980, and extending through December 31, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption, of cotton and manmade fiber textile products in categories 352 and 650, produced or manu-

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factured in Mexico and exported on and after January 1, 1980, in excess of the following levels of restraint.

Category	*12-month level of restraint* [1]
352	181,818 dozen
650	29,412 dozen

Textile products in categories 352 and 650 which have been exported to the United States prior to January 1, 1980, shall not be subject to this directive.

Textile products in categories 352 and 650 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of the textile categories in terms of TSUSA numbers was published in the Federal Register on February 28, 1980 (45 F.R. 13172), as amended on April 23, 1980 (45 F.R. 27463).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of Mexico and with respect to imports of cotton and manmade fiber textile products from Mexico have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions on the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Chairman, Committee for the Implementation of Textile Agreements.

(T.D. 81-81)

Cotton Textile Products—Restriction on Entry

Restriction on entry of cotton textile products manufactured or produced in Pakistan

There are published below directives of August 21 and 28, 1980, received by the Commissioner of Customs from the chairman, Com-

[1] The levels of restraint have not been adjusted to reflect any imports after Dec. 31, 1979. Imports during the January-June period of 1980 have amounted to 70,777 dozen in category 352 and 23,443 dozen in category 650.

mittee for the Implementation of Textile Agreements, concerning restriction on entry of cotton textile products in certain categories manufactured or produced in Pakistan. The directives amend, but do not cancel, that committee's directive of December 20, 1979 (T.D. 80–60).

The directives were published in the Federal Register on August 26 and September 3, 1980 (45 F.R. 56859 and 45 F.R. 58390), by the committee.

(QUO–2–1)

Dated: April 8, 1981.

WILLIAM D. SLYNE
(For Richard R. Rosettie, Acting
Director, Duty Assessment Division).

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., August 21, 1980.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: This directive further amends, but does not cancel, the directive issued to you on December 20, 1979, by the chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton textiles and cotton textile products, produced or manufactured in Pakistan.

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton Textile Agreement of January 4 and 9, 1978, as amended, between the Governments of the United States and Pakistan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on August 26, 1980, and for the 12-month period which began on January 1, 1980, and extends through December 31, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in categories 331, 340, and 342, produced or manu-

factured in Pakistan, in excess of the following adjusted levels of restraint:

Category	*Adjusted 12-month levels of restraint* [1]
331	258,427 dozen pairs
340	41,667 dozen
342	61,798 dozen

Cotton textile products in category 342 which have been exported to the United States prior to Januray 1, 1980, shall not be subject to this directive.

Cotton textile products in category 342 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1448(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The actions taken with respect to the Government of Pakistan and with respect to imports of cotton textile products from Pakistan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States.

Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Chairman, Committee for the Implementation of Textile Agreements.

U.S. DEPARTMENT OF COMMERCE,
INTERNATIONAL TRADE ADMINISTRATION,
Washington, D.C., August 28, 1980.

Committee for the Implementation of Textile Agreements

COMMISSIONER OF CUSTOMS
Department of the Treasury,
Washington, D.C.

DEAR MR. COMMISSIONER: On December 20, 1979, the chairman, Committee for the Implementation of Textile Agreements directed

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[1] The levels of restraint have not been adjusted to reflect any imports after Dec. 31, 1979. Imports in category 342 during the January–May period of 1980 have amounted to 18,726 dozen.

you to prohibit entry for consumption, or withdrawal from warehouse for consumption during the 12-month period beginning on January 1, 1980, and extending through December 31, 1980, of cotton textile products in certain specified categories, in excess of designated level of restraint. The chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton Textile Agreement of January 4 and 9, 1978, as amended, between the Governments of the United States and Pakistan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to prohibit, effective on September 3, 1980, and for the 12-month period which began on January 1, 1980, and extends through December 31, 1980, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in categories 339pt., 341, and 348, produced or manufactured in Pakistan, in excess of the following adjusted levels of restraint:

Category	*Adjusted 12-month level of restraint* [2]
339pt.[3]	127,666 dozen
341	146,639 dozen
348	35,704 dozen

The actions taken with respect to the Government of Pakistan and with respect to imports of cotton textile products from Pakistan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

PAUL T. O'DAY,
Chairman, Committee for the
Implementation of Textile Agreements.

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[1] The term "adjustment" refers to those provisions of the Bilateral Cotton Textile Agreement of Jan. 4 and 9, 1978, as amended, between the Governments of the United States and Pakistan, which provide that: (1) Within the aggregate and group limits, specific levels of restraint may be exceeded by designated percentages; (2) specific levels may be increased for carryover and carryforward with the amount of carryforward used deducted from the level of the following year; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] The levels of restraint have not been adjusted to reflect any imports after Dec. 31, 1979.

[3] In category 339, only TSUSA Nos. 382.0669 and 382.0671.

(T.D. 81–82)

The table below lists rates of exchange, in U.S. dollars for certain foreign currencies, which are based upon rates certified to the Secretary of the Treasury by the Federal Reserve of New York under provisions of section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

QUARTER BEGINNING: APRIL 1, 1981 THROUGH JUNE 30, 1981

Country	Name of currency	U.S. dollars
Australia	Dollar	$1.1638
Austria	Schilling	.067476
Belgium	Franc	.029087
Canada	Dollar	.844951
Denmark	Krone	.151057
Finland	Markka	.246792
France	Franc	.201613
Germany	Deutsche mark	.476758
India	Rupee	.120919
Ireland	Pound	1.7320
Italy	Lira	.000955
Japan	Yen	.004708
Malaysia	Dollar	.438212
Mexico	Peso	.042052
Netherlands	Guilder	.431034
New Zealand	Dollar	.9160
Norway	Krone	.185977
Portugal	Escudo	.017621
Republic of South Africa	Rand	1.2507
Spain	Peseta	.011767
Sri Lanka	Rupee	.055249
Sweden	Krona	.217794
Switzerland	Franc	.521785
United Kingdom	Pound	2.2460

(LIQ–3–01–O:C:E)

Dated: April 2, 1981.

GWENN KLEIN KIRSCHNER,
Acting Chief,
Customs Information Exchange.

(T.D. 81-83)

Foreign Currencies—Variances From Quarterly Rate

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to section 522(C), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), and reflect variances of 5 per centum or more from the quarterly rate published in T.D. 81-13 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Austria schilling:	
March 30, 1981	$0.066489
March 31, 1981	.067193
Belgium franc:	
March 30, 1981	$0.028986
March 31, 1981	.028818
Denmark krone:	
March 30, 1981	$0.151286
March 31, 1981	.150602
Finland markka:	
March 30, 1981	$0.246184
March 31, 1981	.246366
France franc:	
March 30, 1981	$0.202429
March 31, 1981	.200100
Germany deutsche mark:	
March 30, 1981	$0.476758
March 31, 1981	.473821
India rupee:	
March 30, 1981	$0.120337
March 31, 1981	Quarterly
Ireland pound:	
March 30, 1981	$1.7125
March 31, 1981	1.7310
Italy lira:	
March 30, 1981	$0.000953
March 31, 1981	.000948
Netherlands guilder:	
March 30, 1981	$0.430663
March 31, 1981	.427168

Portugal escudo:	
March 30, 1981	$0.017528
March 31, 1981	.017606
Republic of South Africa rand:	
March 30, 1981	$1.2477
March 31, 1981	1.2510
Spain peseta:	
March 30, 1981	$0.011585
March 31, 1981	.011710
Sri Lanka rupee:	
March 30–31, 1981	$0.055249
Switzerland franc:	
March 30, 1981	$0.523013
March 31, 1981	.518672
United Kingdom pound:	
March 30, 1981	$2.2375
March 31, 1981	2.2325

(LIQ-03-01 O:C:E)

Dated: April 2, 1981.

GWENN KLEIN KIRSCHNER,
Acting Chief,
Customs Information Exchange.

U.S. Customs Service

General Notice

(19 CFR Part 177)

Proposed Customs Regulations Amendments Relating to Country-of-Origin Determinations

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes amendments to the Customs Regulations to reflect the Government procurement provisions of the Trade Agreements Act of 1979. The proposed amendments relate to the issuance of country-of-origin advisory rulings and final determinations relating to Government procurement under the act for the purpose of granting waivers of certain Buy American restrictions in U.S. law or practice for products of eligible countries.

DATES: Comments must be received on or before 60 days from date of publication in the Federal Register.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Regulations and Research Division, U.S. Customs Service, 1301 Constitution Avenue NW., room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Benjamin Mahoney, Entry Procedures and Penalties Division, Office of Regulations and Rulings, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202–566–5778.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Trade Agreements Act of 1979, Public Law 96–39, 93 Stat. 144 (the act), approves and implements the trade agreements negotiated by the United States in the Tokyo Round of Multilateral Trade Negotiations (the MTN). The act consists of 11 separate titles. This document relates only to those aspects of title III of the act, Government Procurement, which impact Customs activities.

338-819 O - 81 - 4

Title III, which implements the Agreement on Government Procurement, permits the President to waive certain Buy American restriction in U.S. law or practice which discriminate against particular products of designated countries. Designated countries are those which are parties to the Agreement or which provide reciprocal procurement benefits to the United States. The President is permitted to prohibit Federal Government procurement of products from non-designated countries. Furthermore, the President is permitted to withdraw or to limit waivers granted, and, after consultation with the Congress and the private sector, to grant new waivers.

The President may waive those portions of U.S. law, most notably the Buy American Act (41 U.S.C. 10a et seq.) which discriminate against purchases of foreign goods by Federal Government agencies. A waiver can only apply to goods which are the products of designated countries. Least developed (poorest) countries could be designated without condition. All other countries are required to provide reciprocal benefits for the United States in their government procurement, and major industrial countries are required to become parties to the agreement in order to be designated.

Section 305(b) of title III provides that Customs will make country-of-origin advisory rulings and final determinations for the purpose of waivers for products of eligible countries. Judicial review of the final determinations is provided for in title X of the act.

To implement title III, it is proposed to redesignate the present provisions of part 177, Customs Regulations (19 CFR part 177), as subpart A and add a new subpart B to provide a procedure whereby any foreign manufacturer, producer, or exporter, or a U.S. importer of merchandise, may request and receive an advisory ruling or final determination as to the country of origin of imported merchandise.

AUTHORITY

These amendments are proposed under the authority of R.S. 251, as amended (19 U.S.C. 66); section 624, 46 Stat. 759 (19 U.S.C. 1624); Public Law 96–39, 93 Stat. 144.

COMMENTS

Before adopting this proposal, consideration will be given to any written comments, preferably in triplicate, that are submitted timely to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.8(b), Customs Regulations (19 CFR 103.8(b)), during regular business hours at the Regulations and Research Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Room 2426, Washington, D.C. 20229.

DRAFTING INFORMATION

The principal author of this document was John E. Elkins, Regulations and Research Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

PROPOSED AMENDMENTS

It is proposed to amend part 177, Customs Regulations (19 CFR part 177), in the following manner:

PART 177—ADMINISTRATIVE RULINGS

1. It is proposed to amend part 177 by adding a subpart designation before section 177.1 to read as follows:

SUBPART A—GENERAL RULING PROCEDURE

2. It is proposed to add a new subpart B to part 177 to read as follows:

SUBPART B—GOVERNMENT PROCUREMENT; COUNTRY-OF-ORIGIN DETERMINATIONS

177.21 General

This subpart relates to the issuance of country-of-origin advisory rulings and final determinations relating to Government procurement under Title III, Trade Agreements Act of 1979, Public Law 96–39, 93 Stat. 144, for the purpose of granting waivers of certain Buy American restrictions in U.S. law or practice for products of eligible countries.

177.22 Country of origin

For the purpose of this subpart, an article is a product of a country or instrumentality only if (1) it is wholly the growth, product, or manufacture of that country or instrumentality, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into

a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term "instrumentality" shall not be construed to include any agency or division of the government of a country, but may be construed to include such arrangements as the European Economic Community.

177.23 Who may request country-of-origin determinations

Any foreign manufacturer, producer, or exporter, or a U.S. importer of merchandise, may request a country-of-origin determination.

177.24 By whom request is filed

A request may be filed by a foreign manufacturer, producer, or exporter, or a U.S. importer of merchandise, or by a duly authorized attorney or agent on their behalf. A request filed by a corporation shall be signed by a corporate officer, and a request filed by a partnership shall be signed by a partner.

177.25 Form and content of request

The request shall be in writing and shall contain the following information:

(a) The name of the requester, the requester's principal place of business, and a statement that the requester is either a foreign manufacturer, producer, or exporter, or a U.S. importer, or a duly authorized attorney or agent;

(b) A description of the article for which a country-of-origin determination is requested;

(c) The country or instrumentality an article is claimed to be the product of; and,

(d) Such information as will enable Customs to determine if an article is a product of a specific country or instrumentality.

177.26 Where request filed

The request shall be filed with the Director, Entry Procedures and Penalties Division, Office of Regulations and Rulings, U.S. Customs Service, Washington, D.C. 20229.

177.27 Notification of receipt

Upon receipt of the request by the Office of the Director, Entry Procedures and Penalties Division, it shall be date stamped. The requester shall be promptly advised in writing of the date the request was received.

177.28 Advisory ruling

Within 25 days of receipt of the request, the Director, Entry Procedures and Penalties Division, shall issue an advisory ruling as to whether an article is or would be a product of the claimed foreign country or instrumentality within the meaning of this section. Failure

to issue a ruling within 25 days of receipt of the request shall be construed as an advisory ruling that an article is not or would not be a product of the foreign country or instrumentality claimed in the request. Any advisory ruling which is not appealed under section 177.29 shall become a final determination 30 days from the date of the decision.

177.29 Appeal of advisory ruling

An advisory ruling which is adverse to the requester may be appealed to the Director, Office of Regulations and Rulings, within 30 days of the date of the adverse advisory ruling. The appeal shall contain the same information required by section 177.25. In addition, the appeal shall identify the adverse advisory ruling from which the appeal is taken and the reasons why the party appealing the ruling believes it is in error. The appeal shall be filed with the Director, Office of Regulations and Rulings, U.S. Customs Service, Washington, D.C. 20229. Upon receipt of the appeal by the Office of the Director, Office of Regulations and Rulings, it shall be date stamped. The party appealing shall be promptly advised in writing of the date the appeal was received. The Director, Office of Regulations and Rulings, shall, within 30 days of receipt of the appeal, issue a final determination on the appeal. No further administrative appeal may be taken from the final determination of the Director, Office of Regulations and Rulings. Failure to issue a decision within 30 days of receipt of the appeal shall be construed as a final determination that the article is not or would not be a product of the foreign country or instrumentality claimed in the appeal.

177.30 Publication of notice of final determinations

Notice of all final determinations shall be published in the Federal Register within 60 days of the date the final determination is issued or occurs because of failure to issue a decision within the time limits established by this subpart.

Dated: March 25, 1981.

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

Approved:

JOHN P. SIMPSON,
Acting Assistant Secretary of the Treasury.

[Published in the Federal Register April 9, 1981 (46 F.R. 21194)]

Decisions of the United States Court of Customs and Patent Appeals

(C.A.D. 1261)

S. J. STILE ASSOCIATES LTD., ET AL., APPELLANTS *v.* DENNIS SNYDER, ET AL., APPELLEES, No. 81-9 (—— F. 2d ——)

1. INTERLOCUTORY APPEAL FROM DENIAL OF PRELIMINARY INJUNCTION.

The decision of the Court of International Trade denying Brokers' notice for preliminary injunction is affirmed in case remanded for possible trial on merits.

2. ID.—SCOPE OF REVIEW.

In an interlocutory appeal from denial of preliminary injunctive relief the scope of review is narrow.

3. ID.—INJUNCTION—DISCRETION OF TRIAL COURT.

Application for a preliminary injunction is addressed to the discretion of the trial court, not to that of the appellate court.

4. ID.—ABUSE OF DISCRETION.

One denied a preliminary injunction must meet the heavy burden of establishing an abuse of the trial court's discretion or a clear error of law.

5. PREREQUISITES TO A GRANT OF PRELIMINARY INJUNCTIVE RELIEF.

Prerequisites to a grant of preliminary injunctive relief are: (1) threat of immediate irreparable harm; (2) consideration of any preponderant public interest; (3) likelihood of success on the merits; and (4) a favorable balance of hardships.

6. ID.

Trial court denial of preliminary injunctive relief must be upheld if it examined the appropriate factors and properly concluded that any one of those factors had not been established by the appellant.

7. ID.—PUBLIC INTEREST INJURY.

A preliminary injunction will not issue simply to prevent a mere possibility of injury, even where the prospective injury is great.

8. Language in Trial Court Decision Relative to Future Proceedings.

Trial court's decision is affirmed where the result is correct without scrutiny of every word spoken by the decisionmaker.

U.S. Court of Customs and Patent Appeals, April 2, 1981

Appeal from U.S. Customs Court, C.A.D. 1261

[Affirmed]

Mandel and *Grunfeld*, attorneys for appellants, *Robert B. Silverman* of counsel.

Thomas S. Martin, Acting Assistant Attorney General, *David M. Cohen*, Director, Joseph I. Liebman, Attorney in charge, Sidney N. Weiss, attorneys for appellees.

[Oral argument on March 3, 1981 by *Robert B. Silverman* for appellants and *Sidney N. Weiss* for appellees.]

Before Markey, *Chief Judge*, Rich, Baldwin, Miller, and Nies, *Associate Judges*.

Markey, Chief Judge.

[1] This interlocutory appeal is from the denial of a preliminary injunction. S. J. Stile Associates Ltd., et al. (brokers), who have their sole places of business in the immediate vicinity of the customhouse at J. F. K. Airport, sought to restrain New York Regional Commissioner of Customs Dennis Snyder and his superiors (Commissioner) from discontinuing the practice of permitting a filing of cross-over entries in the New York City Customs District. The Court of International Trade, per Judge Boe, denied the brokers' application for injunctive relief from the bench and subsequently issued a written order to that effect. *S. J. Stile Associates Ltd., et al.* v. *Snyder, et al.*, 2 CIT ——, Slip Op. 81–2 (Jan. 12, 1981). We affirm.

BACKGROUND

The New York City Customs District is coextensive with the New York City Customs Region. The latter is divided into three geographical areas; viz, J. F. K. Airport (JFK), New York Seaport (Seaport) and Newark [19 CFR 101.1(a), 101.3(b)]. Each area has a customhouse located therein for transaction of Customs business.

The term "cross-over" refers to the filing of entry documents, and obtaining release of merchandise, at a customhouse located in one area within the district, for merchandise unladen or placed in a bonded warehouse in another area.

On November 7, 1980, the Commissioner issued Pipeline 524,[1] to become effective on January 12, 1981. After the effective date, Customs entry documentation, and the resulting release of merchandise from Customs custody, for merchandise unladen or warehoused at Seaport or Newark, could not be filed and obtained at JFK and would have

[1] In general, a Pipeline is an information bulletin.

to be filed and obtained at the customhouse at either Seaport or Newark.[2]

The cross-over entry procedure, described by appellants as in existence for 13 years, has remained in effect to this day throughout the New York Customs District. Although the trial court denied application for a preliminary injunction, appellees agreed, at the suggestion of Judge Boe, to postpone implementation of Pipeline 524 until April 1, 1981, pending decision in this appeal.

The purpose of Pipeline 524 as declared in its text is: "To adjust administrative policy to eliminate many of the errors and delays in entry and liquidation caused by inter-area processing at JFK, and to provide more accountable entry service and control of merchandise entered and stored in bonded warehouses."

The Commissioner says Pipeline 524 is one step in a program intended to ameliorate an integrity and management problem, developed over years in the New York region, in which a dishonest importer might effectively elect the customs officer (import commodity specialist) who would process his documentation.[3]

The Commissioner, having determined that elimination of cross-over filing was essential for effective integrity and management control, directed as a first step its elimination at JFK. Statistical surveys indicated that 97 percent of the brokerage business at JFK would be unaffected by application of Pipeline 524.[4]

The brokers claim that substantial time delays in filing documents and obtaining release of merchandise unladen at Seaport-Newark would not be tolerated by their clients, who would purportedly turn to competing brokers with offices at Seaport-Newark. The brokers allege an inability to pass on to their customers the increased business expenses incurred in opening offices at Seaport-Newark or in otherwise coping with travel delays between JFK and Seaport-Newark.

Between the issuance of Pipeline 524 on November 7, 1980, and its January 12, 1981, effective date, the Commissioner actively solicited comments on the prospective change in procedure and conducted meetings on at least five occasions with brokers having offices at or near JFK, at which the foregoing objections were asserted and considered. Remaining convinced of the necessity of eliminating cross-over entries at JFK as a first step in solving what was viewed as an integrity and management problem, the Commissioner adhered

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[2] The Pipeline does not affect cross-over entries between Seaport and Newark. Entry documents and release for merchandise unladen or warehoused at JFK would have to be filed and obtained at JFK and not at either Seaport or Newark.

[3] Extensive investigations into abuses in the New York City Customs Region have resulted in 18 Federal prosecutions of customs officials and others.

[4] Because cross-over entries between Seaport and Newark constitute 55 to 60 percent of the business therefore, the Commissioner says an effort to find an appropriate solution of the Seaport-Newark cross-over problem is continuing.

thereto and the brokers brought this action below on December 19, 1980.[5]

OPINION

[2] In an interlocutory appeal from a denial of preliminary injunctive relief, the scope of review is narrow. **[3]** Application for a preliminary injunction is addressed to the discretion of the trial court, not to that of the appellate court. *A-Copy, Inc.* v. *Michaelson*, 599 F. 2d 450, 452 (CA 1 1978). **[4]** One denied a preliminary injunction must meet the heavy burden of establishing an abuse of the trial court's discretion of a clear error of law. *Brown* v. *Chote*, 41 U.S. 452 (1973); *Fifteen Thousand Eight Hundred and Forty-Four Welfare Recipients* v. *King*, 610 F. 2d 32, 34 (CA 1 1979).

[5, 6] The trial court must be upheld if it examined the appropriate factors and properly concluded that any one of these requisites for a preliminary injunction had not been established by the appellant: (1) A threat of immediate irreparable harm; (2) that the public interest would be better served by issuing than by denying the injunction; (3) a likelihood of success on the merits; and (4) that the balance of hardship on the parties favored appellant. *Grimard* v. *Carlston*, 567 F. 2d 1171, 1173 (CA 1 1978); 11 C. Wright and A. Miller, Federal Practice and Procedure § 2948 (1973); see generally, Developments in the Law—Injunctions, 78 Harv. L. Rev. 944 (1965).

IRREPARABLE HARM

Only a viable threat of serious harm which cannot be undone authorizes exercise of a court's equitable power to enjoin before the merits are fully determined. *Parks* v. *Dunlop*, 517 F. 2d 785 (CA 5 1975). **[7]** A preliminary injunction will not issue simply to prevent a mere possibility of injury, even where prospective injury is great. A presently existing, actual threat must be shown. 11 C. Wright and A. Miller, Federal Practice and Procedure § 2948 (1973); see, *State of New York* v. *Nuclear Regulatory Commission*, 550 F. 2d 745 (CA 2 1977); *Crowther* v. *Seaborg*, 415 F. 2d 347 (CA 10 1969).

The brokers presented general testimony that their business expenses would increase as a result of Pipeline 524. Concerning loss of business, no customer testified that it would transfer its business from any of the brokers.[6] In essence, the brokers invoke the equitable powers of the

[5] The Commissioner testified that Pipeline 524 would be amended to provide free government messenger service between JFK and Seaport-Newark. Hence, even the speculative injuries alleged by the brokers will be mitigated by virtue of the amendment to Pipeline 524. The brokers, devoting one-half page in an extended brief (60 pages) to the amended Pipeline, say that the messenger service does not fully eliminate time delays and increased business expenses.

[6] Brokers' affidavits expressed apprehension and expectation of such transfers. An affidavit described a customer's telephone inquiry on when a new office would be opened. Another affidavit had two customer's letters attached, one inquiring into the matter and the other indicating an intent to seek a broker with a downtown office. The writers of the letters did not testify.

court to stop an action of the Customs Service on the sole ground that the action would cause some increase in their business expenses. Though the Secretary of the Treasury, and thus the Customs Service, is required to facilitate the commerce of the United States and equal protection of consignees, 19 U.S.C. 1584(a)(2)(c), nothing in the law requires that the Secretary or the Customs Service insure against an increase of business expenses of customs brokers. Thus solid proof that increased expenses would be certain, had the same been addressed, would not alone justify the injunction sought.[7]

The trial judge noted:

> Except for testimony presented that increased costs in business operations would result in the event Pipeline 524 is implemented, minimal and insufficient proof, other then speculations, has been presented that a loss of business or other irreparable damage would result.

Recognizing that implementation of Pipeline 524 could result in increased business expenses, the trial judge determined that the brokers had not made a showing of irreparable harm sufficient to support the grant of a preliminary injunction. On careful review of the entire record, we cannot say that the trial judge's determination was erroneous. See, *Artmark Chicago Ltd.* v. *U.S.*, 64 CCPA 116, C.A.D. 1192, 558 F. 2d 600 (1977); *Los Angeles Customs and Freight Brokers Assn., Inc.* v. *Johnson*, 277 F. Supp. 525 (C.D. Cal., 1967).

PUBLIC INTEREST

As noted in the trial judge's written order, the extent of any possible injury, in the form of increased business expenses, that might occur if the injunction were denied, is paled by the injury that would be done public interest if the injunction were granted. The abuses and irregularities identified in the New York City Customs District reasonably motivated the Commissioner of Customs to order corrective action to preserve the integrity of the Customs Service. The brokers offered no evidence tending to minimize the threats of corruption and inefficiency which formed the basis for the issuance of Pipeline 524. The argument that the cross-over procedure itself does not create corruption, ignores the more relevant question of whether continuance of the cross-over procedure may foster or allow corruption or irregularities.

In view of the speculative nature of the proof of alleged irreparable harm, this court is not inclined to substitute its judgment of a pre-

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[7] It was conceded at oral argument that the Secretary of the Treasury has authority to close down the customhouse at JFK altogether, and that brokers doing business at JFK would have no legal basis for an injunction against his doing so, there being no vested or constitutional right in the continued operation of any particular location of customhouses, or in a particular organization of customs regions and districts.

ferred corrective action for that chosen by the designated executive branch representative having primary responsibility for dealing with the problem entrusted to him. *FTC* v. *Cement Institute*, 333 U.S. 683, 726 (1948); *Jacob Siegel Co.* v. *FTC*, 327 U.S. 608, 611–613 (1946); *City of Grand Rapids* v. *Richardson*, 429 F. Supp. 1087 (W.D. Mich. 1977).[8]

We therefore find no error in the trial court's determination that there exists a preponderant public interest in implementing the procedures outlined in Pipeline 524.

Accordingly, we affirm the decision denying a preliminary injunction and remand the case for possible trial on the merits.[9]

AFFIRMED.

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[8] In view of our holding, we need not address in detail other points raised by the parties on appeal regarding the likelihood of success on the merits or the balance of hardship. *A. O. Smith Corp.* v. *F.T.C.*, 530 F. 2d 515 (CA 3 1976). Whether issuance of Pipeline 524 is a result of rulemaking, for example, is mooted by appellants' actual notice (5 U.S.C. 553(b)) and opportunity to participate in the meetings held between Nov. 10, 1980, and Jan. 13, 1981. *Arlington Oil Mills, Inc.* v. *Knebel*, 543 F. 2d 1092 (CA 5 1976), *reh. den.* 545 F. 2d 168 (CA 5 1976); *Florida Citrus Commission* v. *U.S.*, 144 F. Supp. 517 (N.D. Fla. 1956), aff'd 352 U.S. 1021 (1957). No evidence was introduced that any interested party was not given notice or afforded a full and fair opportunity to participate in the consideration of Pipeline 524.

[9] [8] It is a decision we affirm, not every word spoken by the decisionmaker below. The trial judge's indication from the bench that trial on the merits was unlikely cannot, absent a successful motion to dismiss, deprive appellants of their right to a trial of any triable issue remaining.

United States Court of International Trade

Decisions of the United States Court of International Trade

(Slip Op. 81–28)

SCHERING CORPORATION, PLAINTIFF *v.* THE UNITED STATES, DEFENDANT

Court No. 76–9–02111

Before BOE, Judge.

ALKALOID SALTS—NATURAL, SYNTHETIC

I. L-ephedrine hydrochloride is not found in nature within the meaning of headnote 3(a) of schedule 4, part 3, the plaintiff having

failed to prove that it exists in the stem of the Ma Huang plant and serves as the starting substance to produce the imported merchandise.

II. Assuming, arguendo, that L-ephedrine hydrocholoride is found in nature, the plaintiff has failed to establish that said substance has not had changes made to its molecular structure during the production process of the imported merchandise.

[Judgment for defendant.]

(Decided March 24, 1981)

Barnes, Richardson & Colburn (*James S. O'Kelly* at the trial; *Michael A. Johnson* with him on the brief) for the plaintiff.

Thomas S. Martin, Acting Assistant Attorney General; *Joseph I. Liebman*, Attorney in Charge, International Trade Field Office, Commercial Litigation Branch (*Saul Davis* at the trial and on the brief) for the defendant.

BOE, Judge: The subject merchandise in the above-entitled action is the chemical compound L-ephedrine hydrochloride, a crystalline alkaloid salt, which was exported from Shanghai, China, and entered at the port of New York on May 14, 1976.

Upon liquidation the merchandise was classified by Customs as "synthetic" under item 437.20, TSUS. Plaintiff, however, contends that the merchandise is natural and, therefore, properly classifiable under item 437.22, TSUS. The relevant statutory scheme provides:

SCHEDULE 4.—CHEMICALS AND RELATED PRODUCTS

PART 3.—DRUGS AND RELATED PRODUCTS

Part 3 headnotes:

* * * * * * *

> 3. For the purposes of this part—
>
> (a) "*natural substances*" are those substances found in nature which comprise whole plants and herbs, anatomical parts thereof, vegetable saps, extracts, secretions and other constituents thereof; whole animals, anatomical parts thereof, glands or other animal organs, extracts, secretions and other constituents thereof, and which have not had changes made in their molecular structure as found in nature;
>
> (b) a "*synthetic substance*" is a chemical compound made by the artificial combination of elements or radicals by any physical or chemical process;
>
> * * * * * * *

	Alkaloids and their esters, ethers, salts, and other compounds:	
	* * * * * * *	
	Other alkaloids and their compounds:	
437.20	Synthetic	25% ad val.
437.22	Natural: Not artificially mixed	10% ad val.

The pharmaceutical company in the People's Republic of China, engaged in the production of the imported merchandise, deems the details thereof to be a trade secret. Upon the motion by counsel for plaintiff, evidence as to the process described in the record, pursuant to an order of the court, was presented in camera. Plaintiff's counsel having renewed its request that such evidence be accorded the same confidentiality in the briefs of respective counsel and that circulation thereof accordingly be restricted, this court in conformity with counsel's request and in summarizing the process used in the production of the merchandise in question will neither attempt to detail herein the specific steps required nor the exact proportions of chemicals used during the process.

In the production of L-ephedrine hydrochloride, quantities of the dried stems of the herb, *Ephedra sinica* Stapf, also known as Ma Huang, are cut into small pieces. This cut material is then placed into an extraction vessel wherein large quantities of water are added, heated with live steam, thereby building up the pressure in the vessel. The extraction process is repeated several times, yielding an aqueous extract; the used stems are discarded as waste product. Sodium hydroxide, a strong base, is added to the aqueous extract, making the extract alkaline. In this alkaline environment, the ephedrine exists as an electrically neutral base and in this form the ephedrine (along with a related substance, pseudoephedrine) is extracted out of the aqueous solution and into an organic solution by the addition of the organic solvent, toluene. Subsequent steps in the production process involve the treatment of the ephedrine base with a solution of oxalic acid, creating the alkaloid salt, ephedrine oxalate. Following a crystallization process by which the pseudoephedrine is separated out, the ephedrine oxalate crystals are put into solution, and a calcium chloride solution is added, precipitating out calcium oxalate. The solution that remains after the removal of certain impurities, results in the L-ephedrine hydrochloride crystals which are the subject merchandise herein.

In addressing the issues determinative of the instant cause of action, the court, in conjunction with the professional presentations relating to organic chemistry and its application to the within proceedings made by learned witnesses, necessarily must apply to such testimony legal

principles which may or may not conform to the rationale of the scientific scholar.

Upon the plaintiff rests the dual burden of proving that the classification made by Customs is in error and that its claimed classification is correct. Thus, in examining and considering the evidence adduced by the plaintiff, the court directs its immediate and initial attention to the sufficiency thereof in support of its claim that the imported merchandise is natural. Unless the plaintiff is able to so establish its claim, this cause of action fails.

In order to be a natural substance within the meaning of headnote 3(a) of schedule 4, part 3, the imported merchandise must satisfy two criteria: (1) It must be found in nature in a vegetable or animal source; and (2) it cannot have had changes made in its molecular structure as found in nature. For the reasons hereinafter stated, the court finds that neither of these criteria have been met, and, accordingly, the imported merchandise cannot be classified as "natural" within the meaning of schedule 4, part 3 of the tariff schedules, as claimed by plaintiff.

A substance is found in nature, within the meaning of headnote 3(a), when that substance exists as such in the vegetable or animal source from which it is produced and serves as the starting substance to produce an imported product. *See: United States* v. *Pharmacia Fine Chemicals*, 59 CCPA 196, 463 F. 2d 1370 (1972); *Sandoz, Inc.* v. *United States*, 57 CCPA 44, 418 F. 2d 1396 (1969) and *Chemical Specialties Co.* v. *United States*, 43 CCPA 93, C.A.D. 614 (1956). The undisputed evidence indicates that in the Ma Huang plant stem virtually all of the ephedrine is protonated, that is, there has been added to its basic structure a positively charged hydrogen atom, making the protonated ephedrine a positively charged particle. Such particles with positive electrical charges are termed cations. Again, it is undisputed that scientific theory has established that, in solution, cations are associated with negatively charged particles termed anions. The evidence also demonstrates that there is more than enough chloride anions in the plant stem to associate with all of the ephedrine cations in the plant. The underlying inquiry which accordingly must be determined is whether in the plant itself ephedrine cations and chloride anions exist in an association as to create the salt, L-ephedrine hydrochloride.

The evidence presented shows that the structure of the plant stem cannot be likened to a glass beaker containing a solution, the contents of which can all freely move about. The plant stem contains, among other structures, cell walls, providing a barrier between the contents of a cell and its outside environment, and vacuoles, the contents of which are separated from the rest of the cell by means of a semipermeable membrane. Plaintiff's witness, Mr. McGlotten, acknowledged

that he did not know whether the ephedrine cations and chloride anions were present in the same portions of the plant stem.[1] Without evidence that the ephedrine cations and the chloride anions are not precluded by their locations within the stem from being in proximity with each other, it cannot be presumed that these cations and anions have become associated therein, resulting in the creation of L-ephedrine hydrochloride within the plant stems.

For the purpose of proving that L-ephedrine hydrochloride is found in nature, it would be insufficient to demonstrate that only a de minimis quantity of L-ephedrine hydrochloride existed in the plant stems. The L-ephedrine hydrochloride must have served as the starting substance for the production of the imported merchandise. *See: United States* v. *Pharmacia Fine Chemicals, supra; Sandoz, Inc.* v. *United States, supra.* In *Sandoz*, the court found that digitoxin was not natural where only 10 percent of the imported merchandise was produced from digitoxin native to the plant. In the case at bar, the extensive chemical analysis of the stems by Dr. Flor showed that the L-ephedrine cation and the chloride anion in the plant stem represented very small percentages of the positive charges and negative charges, respectively, in the stem. Cations that were far more predominant than L-ephedrine in the Ma Huang stem included calcium, magnesium, and potassium representing, respectively, 72.57, 12.37 and 10.63 percent of all cations in the Ma Huang stem (R. 199). These, in addition to pseudoephedrine cations as well as others might well compete with the L-ephedrine cation for the chloride anion, again depending on their respective locations within the plant cellular structure. In addition to the chloride anion in the stem, Dr. Flor found significant amounts of oxalic acid, which, in the presence of an ephedrine base, could associate with all of the ephedrine to produce ephedrine oxalate.[2]

Despite all of these possible ionic combinations in the stems, plaintiff argues that the chloride anions are more likely to associate with ephedrine cations than other anions that might be present in the plant stem. The rationale for this conclusion, as related in the testimony of Mr. McGlotten, is that the L-ephedrine base being a strong base, would combine more readily with a strong acid such as hydrochloric acid, to form the salt L-ephedrine hydrochloride. However, plaintiff has provided no evidence wherein it appears that hydrochloric acid (HCL) exists in the plant stem, and in such quantity as to be able to combine with all of the ephedrine base to produce

[1] The testimony of Mr. McGlotten and that of Dr. Flor, the witnesses for the plaintiff and defendant, respectively, who had done chemical analyses of the Ma Huang stems, indicate that cell walls had to be disrupted in order to analyze the chemical contents of the stems.

[2] Dr. Flor also found the presence of phosphate anions and sulfate ions in the stem, which could compete with the chloride anions for the ephedrine cation, but the phosphates and sulfates were not quantified.

the L-ephedrine hydrochloride. The absence of any evidence that chloride is in fact bonded to the hydrogen in the plant stem, in the form of hydrochloric acid, makes plaintiff's assertions as to the affinity of the ephedrine cation for the chloride anion mere speculation.

In summary, plaintiff has failed to show that naturally occurring L-ephedrine hydrochloride serves to produce the imported merchandise. In fact, plaintiff has failed to prove that any L-ephedrine hydrochloride exists in the Ma Huang stem. This court, accordingly, cannot find that L-ephedrine hydrochloride is found in nature within the meaning of headnote 3(a) of schedule 4, part 3.

Assuming, for the sake of argument that plaintiff could establish that L-ephedrine hydrochloride is found in nature within the meaning of headnote 3(a), plaintiff's claim that the subject merchandise is natural, nevertheless, must fail inasmuch as plaintiff has failed to establish that the substance found in nature, that is, L-ephedrine hydrochloride "[has] not had changes made in [its] molecular structure as found in nature" within the meaning of headnote 3(a). This latter criterion of headnote 3(a) distinguishes synthetic substances from natural substances based on whether these substances have or have not undergone chemical changes subsequent to their natural production. *Pharmacia Fine Chemicals, supra.* We interpret this statutory criterion, as well as the case law construing it, to require that the original and natural L-ephedrine hydrochloride must remain identifiable at all distinct stages in the production of the imported merchandise. Cf. *Ciba-Geigy Corporation* v. *United States*, 65 CCPA 80, 582 F. 2d 26, C.A.D. 1210 (1978) (construing headnote 3 of schedule 4, part 1).

Continuing to assume, arguendo, that L-ephedrine hydrochloride has been extracted from the Ma Huang stems into an aqueous extract using an extraction vessel as described above, upon the addition of sodium hydroxide supplied from an outside source to the aqueous extract, the L-ephedrine hydrochloride, a salt, is destroyed and the L-ephedrine is chemically changed into a base. This reaction involves the removal of a proton (and thereby the positive charge) from the L-ephedrine cation, resulting in its disassociation from a chloride anion or, in fact, from any other anion with which it might be in association. In a subsequent step, the L-ephedrine base is further chemically changed into L-ephedrine oxalate when the L-ephedrine base reacts with oxalic acid solution which has been supplied from an outside source. This reaction involves the protonation of two L-ephedrine bases, and their association with a single oxalate anion. Again subsequently, the L-ephedrine oxalate chemically reacts with a calcium chloride solution which likewise has been supplied from an outside

source, resulting in the formation of L-ephedrine hydrochloride. This reaction involves an ionic interchange, that is, the oxalate anion associated with the L-ephedrine cations, becomes associated with the calcium cation and the chloride anions associated with the calcium cation becomes associated with the ephedrine anion.

According to the testimony and exhibits, the L-ephedrine hydrochloride, L-ephedrine and L-ephedrine oxalate, respectively existing at various stages of the production process, all have different molecular structures and physical properties. The court has noted the testimony of plaintiff's witness, Dr. Breslow, who, in commenting on the molecular changes occurring in the process involving the production of the imported merchandise, characterized such changes as trivial and reversible. To be sure, the concepts and interpretations of those learned authorities in their scientific fields of endeavor may bear a, perspective that is indeed dissimilar to those, including this court who must apply the common meaning and interpretation to an unambiguous word or group of words which have been enunciated by legislative authority. Notwithstanding the comments of witnesses minimizing the extent or nature of the molecular changes as herein referred to, from the evidence presented to this court it cannot be said that no chemical change has taken place subsequent to an alleged extraction of L-ephedrine hydrochloride from within the Ma Huang stems. Suffice it to say, the alleged natural L-ephedrine hydrochloride has not remained identifiable at all of the distinct stages in the production of the imported L-ephedrine hydrochloride. Therefore, this court must conclude that plaintiff has failed in its burden to demonstrate that the L-ephedrine hydrochloride "[has] not had changes made in [its] molecular structure as found in nature" within the meaning of headnote 3(a).

Plaintiff has thus failed to prove either of the two criteria which are requisite to establish the imported merchandise a natural substance within the contemplation of headnote 3(a). The definitions of "natural substances" and "synthetic substances" are complementary. *Pharmacia Fine Chemicals, supra.* Inasmuch as the imported merchandise is not classifiable as a "natural" alkaloid compound under 437.22, TSUS, it is, accordingly, properly classifiable under 437.20, TSUS.

Let judgment be entered accordingly.

Decision of the United States Court of International Trade

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *March 30, 1981.*

The following abstracts of decisions of the United States Court of International Trade at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

WILLIAM T. ARCHEY,
Acting Commissioner of Customs.

NUMBER DECISION	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P81/39	Re, C.J. March 23, 1981 (decided on remand of C.D. 4689 [C.A.D. 1202])	Rudolph Miles	73-11-03042, etc.	Item 690.15 18% without allowance under item 807.00	Items 690.15/ 870.00 18% upon full value of imported railroad boxcars, less cost or value of U.S. fabricated components (Z-beams) determined to be $395.22 per boxcar	Agreed statement of facts	El Paso American goods returned; U.S. fabricated Z-beams assembled into railroad boxcars
P81/40	Ford, J. March 23, 1981	RMS Electronics Inc.	77-12-04843	Item 682.05 12.5%	Item 685.20 5%	RMS Electronics, Inc. v. U.S. (C.D. 4818, aff'd C.A.D. 1249)	Honolulu Baluns, impedence matching couplers, matching transformers, model No. CA-2600F
P81/41	Ford, J. March 23, 1981	RMS Electronics Inc.	78-10-01838, etc.	Item 682.05 12.5% (items marked "A" and "B")	Item 682.07 6% (items marked "A") Item 685.20 5% (items marked "B")	RMS Electronics, Inc. v. U.S. (C.D. 4818, aff'd C.A.D. 1249)	New York Baluns, impedence matching couplers, matching transformers, model Nos. CA-2600F, MA-730, ATR-375, CA-2500, CA-2100, etc.

P81/42	Maletz, J. March 23, 1981	International Paint Co. (California), Inc.	69/19665, etc.	Item 409.00 7¢ per lb. + 45%; 5.5¢ per lb. + 36%; 4.9¢ per lb. + 31%; 4¢ per lb. + 27%; 3.5¢ per lb. + 22.5%	Item 405.15 3.5¢ per lb. + 25%; 3¢ per lb. + 22%; 2.5¢ per lb. + 20%; 2¢ per lb. + 17.5%; 2¢ per lb. + 15%; 1.7¢ per lb. + 12.5%	Agreed statement of facts	San Francisco "Antifouling Paste Paint H134"
P81/43	Maletz, J. March 23, 1981	K Mart Corporation	78-11-01926	Item 649.83 8.7¢ each + 13.3%	Item 650.19 1¢ each + 6%	Agreed statement of facts	Longview (Portland, Oreg) Fixed blade hunting knives with wooden handles
P81/44	Richardson, J. March 25, 1981	Sortex Co. of North America, Inc.	79-4-00710, etc.	Item 712.49 10%	Item 666.25 5.5%	Sortex Company of North America, Inc. v. U.S. (C.D. 4746, aff'd C.A.D. 1221)	New York Electronic color sorting machines and parts thereof
P81/45	Watson, J. March 25, 1981	Canadian Vinyl Industries, Inc.	73-3-00778	Item 355.82 12.5¢ per lb. + 15%	Item 771.40 4%	U.S. v. Canadian Vinyl Industries, Inc. (C.A.D. 1189)	Champlain-Rouses Point (Ogdensburg) Polyurethane coated nylon fabrics
P81/46	Watson, J. March 25, 1981	Canadian Vinyl Industries, Inc.	73-9-02662	Item 355.82 12.5¢ per lb. + 15%	Item 771.40 4%	U.S. v. Canadian Vinyl Industries, Inc. (C.A.D. 1189)	Champlain-Rouses Point (Ogdensburg) Polyurethane coated nylon fabrics

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P81/47	Watson, J. March 25, 1981	WFS Div. Amer. Rec. Grp., Ltd.	78-4-00640	Item 389.62 25¢ per lb. + 15%	Item 735.20 10%	The Newman Importing Co., Inc. v. U.S. (C.D. 4648)	Boston Nylon backpacking tents
P81/48	Watson J., March 25, 1981	WFS Div. Amer. Rec. Grp., Ltd.	78-6-01118	Item 389.60 or 389.62 25¢ per lb. + 15%	Item 735.20 10%	The Newman Importing Co., Inc. v. U.S. (C.D. 4648)	New York Nylon backpacking tents
P81/49	Ford, J. March 26, 1981	RMS Electronics Inc.	75-10-02533, etc.	Item 682.05 12.5% (items marked "A" and "B")	Item 682.07 6% (items marked "A") Item 685.20 5% (items marked "B", model CA-2600F)	RMS Electronics, Inc. v. U.S. (C.D. 4818, aff'd C.A.D. 1249)	New York Baluns, impedence matching couplers, matching transformers, model Nos. CA-2600F, MA-730, ART-375, CA-2500, CA-2100, etc. (items marked "A" and "B")
P81/50	Watson, J. March 26, 1981	J. C. Penney Purchasing Corporation	78-11-02069, etc.	Item 389.62 25¢ per lb. + 15% (items marked "A" and "B")	Item 735.20 10% (items marked "A") Item A735.20 Free of duty pursuant to general headnote 3(c) of TSUS, au-	The Newman Importing Co., Inc. v. U.S. (C.D. 4648)	San Francisco Nylon tent flies (items marked "A" and "B")

					thorized by title V of Trade Act of 1974, and Executive Order No. 11888 of 11–26–75 (items marked "B")		
P81/51	Watson, J. March 27, 1981	Mobay Chemical Corp. et al.	73–5–01261, etc.	Item 409.00 7¢ per lb. + 45%; 6.3¢ per lb. + 40%; 5.5¢ per lb. + 36%; 4.9¢ per lb. + 31%; 4¢ per lb. + .27%; 3.5¢ per lb. + 22.5% (items marked "A" and "B")	Item 405.25 2.8¢ per lb. + 18%; 2.5¢ per lb. + 16%; 2.2¢ per lb. + 14%; 1.9¢ per lb. + 12.5%; 1.6¢ per lb. + 10.5%; 1.4¢ per lb. + 9% (items marked "A") Item 406.70 40%, 36%, 32%, 28%, 24%, 20% (items marked "B")	Agreed statement of facts	New York "White and black urethane pastes" (items marked "A") All involved urethane pastes other than those described as "white" or "black" (items marked "B")

Decisions of the United States Court of International Trade

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/116	Re, C.J. March 25, 1981	Holly Stores, Inc.	77-12-04894, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Los Angeles Wearing apparel, etc.

R81/117	Re, C.J. March 25, 1981	Kanmatsu Gosho (USA) Inc.	74-10-02901, etc.	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Wearing apparel, etc.
R81/118	Re, C.J. March 25, 1981	Marubeni America Corp. et al.	74-12-03482, etc.	Export value	Unit values found by appraising customs official, less ocean freight and marine insurance, without additions to said values for currency fluctuation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Various articles
R81/119	Re, C.J. March 25, 1981	Marubeni America Corp.	75-4-00961	Export value	Unit values found by appraising customs official, less ocean freight and marine insurance, without additions for currency fluctuation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	New York Cotton fabrics
R81/120	Re, C.J. March 25, 1981	Sanyo Electric Inc.	78-8-01373	Export value	Appraised values shown on entry papers less additions included to reflect currency revaluation	C.B.S. Imports Corp. v. U.S. (C.D. 4739)	Los Angeles Electronic articles

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/121	Watson, J. March 26, 1981	Geigy Chemical Corporation	R65/18054	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 24.2% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

R81/122	Watson, J. March 26, 1981	Geigy Chemical Corporation	R65/18436	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 25.3% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to placeof delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customsduties payable on mported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/123	Watson, J. March 26, 1981	Geigy Chemical Corporation	R65/18451	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 24.2% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs
R81/124	Watson, J. March 27, 1981	Geigy Chemical Corporation	R65/18452	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 24.2% representing profit and general expenses usually made in U.S. on sales of dye-	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

					stuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs		
R81/125	Watson, J. March 27, 1981	Geigy Chemical Corporation	R65/18454	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 24.2% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R81/126	Watson, J. March 27, 1981	Geigy Chemical Corporation	R65/18455	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 24.2% representing profit and general expenses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs
R81/127	Watson, J. March 27, 1981	Geigy Chemical Corporation	R65/18622	United States value	U.S. selling prices, less 1% cash discount as determined by customs officer at time of appraisement; less 24.2% representing profit and general ex-	U.S. v. Geigy Chemical Corporation et al. (C.A.D. 1155)	New York Benzenoid dyestuffs

					penses usually made in U.S. on sales of dyestuffs of same class or kind; less costs of transportation and insurance from place of shipment to place of delivery in amounts determined by customs officer at time of appraisement; divided by 1.40 or such other factor applied by customs officer, to allow for customs duties payable on imported dyestuffs		
R81/128	Watson, J. March 27, 1981	Kanematsu N.Y., Inc. Kanematsu-Gosho (USA) Inc.	R68/1820, etc.	Cost of production	Invoiced unit prices, f.o.b. Japan	Given International, Inc. v. U.S. (C.D. 4624)	Cleveland Lathes and accessories
R81/129	Watson, J. March 27, 1981	Kanematsu N.Y. Inc. Kanematsu-Gosho (USA) Inc.	R68/2586, etc.	Cost of Production	Invoiced unit prices, f.o.b. Japan	Given International, Inc. v. U.S. (C.D. 4624)	New York Lathes and accessories
R81/130	Watson, J. March 27, 1981	First Chemical Products, Inc.	R70/5972, etc.	American selling price	Equal to appraised values if exported in 1969; $8.50 per kilogram, net, packed, if exported in 1970; or $8.62 per kilogram, net, packed, if exported 1/1/71–6/30/71	Agreed statement of facts	New York Sulfamethazine U.S.P. grade

International Trade Commission Notices

Investigations by the U.S. International Trade Commission

DEPARTMENT OF THE TREASURY

The appended notices relating to investigations by the U.S. International Trade Commission are published for the information of Customs Officers and others concerned.

R. E. CHASEN,
Commissioner of Customs.

Investigation No. 731–TA–40 (Preliminary)

SECONDARY ALUMINUM ALLOY IN UNWROUGHT FORM FROM THE UNITED KINGDOM

AGENCY: U.S. International Trade Commission.

ACTION: Institution of preliminary antidumping investigation.

SUMMARY: The U.S. International Trade Commission hereby gives notice of the institution of investigation No. 731–TA–40 (preliminary) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the United Kingdom of secondary aluminum alloy in unwrought form, provided for in item 618.0650 of the Tariff Schedules of the United States Annotated (TSUSA), which are allegedly sold or likely to be sold in the United States at less than fair value (LTFV).

EFFECTIVE DATE: March 24, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Lynn Featherstone, Office of Investigations, U.S. International Trade Commission, Room 346, 701 E Street NW., Washington, D.C. 20436; telephone 202–523–0242.

SUPPLEMENTARY INFORMATION: On March 24, 1981, petitions were simultaneously filed with the U.S. Department of Commerce and the U.S. International Trade Commission by the

Aluminum Recycling Association, Inc., on behalf of its member firms alleging that secondary aluminum alloy in unwrought form from the United Kingdom is being sold in the United States at LTFV and that an industry in the United States is being materially injured or threatened with material injury by reason of such imports. Accordingly, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), the Commission is instituting preliminary antidumping investigation No. 731–TA–40 (preliminary) to determine whether a reasonable indication of such injury exists. The Commission must make its determination within 45 days after the date on which the petition was received, or in this case by May 8, 1981. The investigation will be conducted according to the provisions of part 207, subpart B, of the Commission's Rules of Practice and Procedure (19 CFR 207).

For purposes of this investigation, secondary aluminum alloy is aluminum alloy which has been produced from aluminum recovered from scrap.

WRITTEN SUBMISSIONS: Any person may submit to the Commission a written statement of information pertinent to the subject of this investigation. A signed original and 19 true copies of each submission must be filed at the Office of the Secretary, U.S. International Trade Commission Building, 701 E Street NW., Washington, D.C. 20436, on or before April 24, 1981. All written submissions except for confidential business data will be available for public inspection.

Any business information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential business information." Confidential submissions and requests for confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6).

For further information concerning the conduct of the investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR 207), and part 201, subparts A through E (19 CFR 201).

CONFERENCE: The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 10 a.m. e.s.t., on Monday, April 20, 1981, at the U.S. International Trade Commission Building. Parties wishing to participate in the conference should contact the supervisory investigator for this investigation, Mr. Lynn Featherstone, 202–523–0242. It is anticipated that parties in support of the petition for antidumping duties and parties opposed to such petition will each be collectively allocated 1 hour within which to make an oral presentation at the conference. Further details concerning the conduct of the conference will be provided by the supervisory investigator.

INSPECTION OF PETITION: The petition filed in this case is available for public inspection at the Office of the Secretary, U.S. International Trade Commission.

This notice is published pursuant to section 207.12 of the Commission's Rules of Practice and Procedure (19 CFR 207.12).

By order of the Commission.

Issued: March 30, 1981.

KENNETH R. MASON,
Secretary.

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